No. 241. 38.

Affidavit of Duffield.

Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

Filed April 8, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 241.

MICHAEL W. O'BRIEN ET AL., EXECUTORS, COMPLAINANTS AND APPELLANTS,

vs.

JOHN G. WHEELOCK ET AL., DEFENDANTS.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-8-'01

Supreme Court of the United States.

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MICHAEL W. O'BRIEN ET AL., EXECUTORS, COMPLAINANTS AND APPELLANTS,

vs.

JOHN G. WHEELOCK ET AL., DEFENDANTS.

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

Henry M. Duffield, being duly sworn, deposes and says, in reply to the application of A. C. Matthews and Harry Higbee for a continuance of this cause:

1. Milton Hay died before the argument of the cause in the circuit court of the United States for the southern district of Illinois before Judge Allen in November, 1895.

2. Henry S. Greene died in February, 1899, before the petition for certiorari was filed in this cause.

3. General Harrison died March 13 last.

4. On the 10th of March deponent wrote Mr. Worthington, with whom all deponent's correspondence in respect of

this case has been, to know what effect General Harrison's illness would have on the hearing of the cause on the regular call, stating that this deponent's other professional engagements made it important that he should know as soon as possible whether the cause would be heard this term.

March 15 Mr. Worthington replied: The defendants "cannot be ready unless the court takes an adjournment until about April 8th. I will be pleased to have you join me in asking for that much of an adjournment if it become necessary," and stating he had not had a conference with his associates and probably could not get them together before "Monday next" (March 18), and saying: "I will only state that so far as I am concerned I do not think we will ask any continuance."

5. Deponent at once telegraphed the clerk of this court and March 18 received a reply that the cause would not be reached before week of April 8. On the same day deponent received the following telegram:

"PITTSFIELD, ILL., *March 18th*, '01.

"General HENRY DUFFIELD,
Detroit, Mich.:

"To avoid postponement we offer to submit Sny Levee case on call without oral argument provided your brief furnished by us twenty-second. Do you accept proposition? Reply at Pittsfield immediately.

"MATTHEWS, HIGBEE & WORTHINGTON."

"To which deponent replied, 'Cannot consent. Clerk telegraphs case will not be reached before week of April 8th.'

"HENRY M. DUFFIELD."

7. April 2 deponent received the following telegram:

"JACKSONVILLE, ILLS., 2 *April*, 1901.

"Gen'l HENRY M. DUFFIELD, *Detroit:*

"Please forward me copy brief here and Springfield and Matthews, Pittsfield and Higbee, Ottawa, Ills.

"THOMAS WORTHINGTON."

8. Deponent at once, within an hour of receipt of dispatch, forwarded the copies of briefs as requested by mail, with full postage thereon paid, in addition to the twenty-five (25) copies sent to the clerk, as required by the rules of this honorable court.

9. Deponent further says that on the same day, in response to a telegraphic request from Mr. A. G. Crawford, who appeared in the court of appeals for other defendants, he also sent said Crawford a copy of deponent's brief.

10. Deponent has heard nothing further from either Mr. Worthington, Matthews, or Higbee until the date hereof, when he received the application for a continuance filed herein and sworn to April 2, with a letter of transmittal dated Pittsfield, Illinois, April 4, 1901, and later, on the same day, received a copy of a full brief in this case with the names of General Harrison, A. C. Matthews, Thomas Worthington, Harry Higbee, and J. Otis Humphrey thereon as counsel for the defendants, and that much of the same is in the precise language of General Harrison's answer to the petition for certiorari in this cause.

11. That he has no information from either Mr. Worthington, who, together with General Harrison, appears on the brief in the United States circuit court of appeals with Mr. Mat-

thews and Mr. Higbee, or from Mr. Crawford that they are not ready to argue the case when reached.

12. Deponent further says that this case was argued in the court of appeals on behalf of the defendants by General Harrison, Mr. Greene, Mr. Worthington, Mr. Higbee, and Mr. Crawford; that one brief filed in the court of appeals was signed by those gentlemen and J. O. Humphrey, another signed by Mr. A. G. Crawford for other defendants; that in addition to said brief stenographic notes of General Harrison's argument were taken and printed and filed in said court of behalf of defendants.

13. General Harrison signed and, as deponent believes, revised or prepared the reply to complainants' petition for a rehearing in the circuit court of appeals, and also signed and, as deponent believes, revised or prepared the answer to complainants' petition for certiorari to this court.

14. Under these circumstances deponent has arranged his other professional engagements so that he might argue this cause when called in its regular order, and was warranted in so doing by the conduct of the counsel in the case, who now suddenly and without assigning any reason for the change ask a continuance until the next term of this court.

HENRY M. DUFFIELD.

Sworn and subscribed before me this — day of April, 1901.

[NOTARIAL SEAL.] DIVIE B. DUFFIELD,
Notary Public, Wayne County, Michigan.